

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt Express)	
Clean Line LLC for a Certificate of Convenience and)	
Necessity Authorizing it to Construct, Own, Operate,)	<u>File No. EA-2016-0358</u>
Control, Manage and Maintain a High Voltage, Direct)	
Current Transmission Line and an Associated Converter)	
Station Providing an Interconnection on the Maywood -)	
Montgomery 345kV Transmission Line)	

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

Issue Date: December 27, 2016

Effective Date: December 27, 2016

On August 30, 2016, Grain Belt Express Clean Line LLC (“Grain Belt Express”) filed an application with the Missouri Public Service Commission (“Commission”) for a Certificate of Convenience and Necessity to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County.

The Missouri Landowners Alliance (“MLA”) issued data requests to Grain Belt Express and the Missouri Joint Municipal Electric Utility Commission seeking information regarding communications between prospective purchasers of energy transmitted over the proposed transmission line and descriptions of pricing calculations included in their request for information responses. On December 13, 2016, Infinity Wind Power (“Infinity”) requested that the Commission issue a protective order to prohibit the disclosure of Infinity’s commercially-sensitive business information to any party in this proceeding.

Commission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a highly confidential designation.¹ Missouri Supreme Court Rule 56.01(c) states that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including...that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way”. Where confidential information is being sought, especially from non-parties, the burden is on the party seeking discovery to show that the probative value of the information outweighs the harm disclosure would cause to the person from whom the information is sought.²

Ten days have elapsed and no party has objected to Infinity’s motion for a protective order.³ The Commission finds that disclosure of the requested information would be harmful to Infinity’s business interests. Release of that information would negatively impact Infinity’s ability to negotiate by providing a competitive advantage to others to the detriment of Infinity. Disclosing this commercially-sensitive information would have a chilling effect on intervention and participation by the wind industry in similar future proceedings. Designation of this information as highly confidential, which permits disclosure to a party’s attorneys and expert witnesses, would not adequately protect the information because once that information is known to other persons it could be utilized in the future in other

¹ Commission Rule 4 CSR 240-2.135(6).

² *Litton Industries, Inc. v. Chesapeake & Ohio Railway Company*, 129 F.R.D. 528, 530 (E.D.Wis. 1990), analyzing Federal Rule of Civil Procedure 26(c), which is substantially similar to Mo. Sup. Ct. R. 56.01(c). The federal district court in *Litton* held that some confidential information could not be discovered where disclosure would provide an advantage to a non-party’s competitors and harm the non-party’s customer relations. “[F]ederal precedent concerning that [federal] rule...is a persuasive guide for the construction of Rule 56.01(c)”. *Stortz by Stortz v. Seier*, 835 S.W. 2d 540, 541 (Mo. App. 1992).

³ Commission rule 4 CSR 240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

forums. The Commission finds that the probative value of the information requested in the MLA data requests is outweighed by the harm that disclosure would cause to Infinity. So, the Commission will grant the unopposed motion for a protective order.

THE COMMISSION ORDERS THAT:

1. The motion for a protective order filed by Infinity Wind Power on December 13, 2016, is granted.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 27th day of December, 2016.